

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

EVERGREEN CHARTER SCHOOL
Employer

and

Case 29-RD-175250

ALISON GREENE
Petitioner

and

EVERGREEN CHARTER STAFF
ASSOCIATION, NYSUT, AFT
Union

ORDER

The Union's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹ In denying review, we agree with the Regional Director, for the reasons he stated, that the Employer charter school is not exempt as a political subdivision under Sec. 2(2) of the National Labor Relations Act. We find that the Regional Director correctly applied the test in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971) ("Hawkins County"), in finding that the Employer was neither created directly by the state so as to constitute a department or administrative arm of the government nor administered by individuals who are responsible to public officials or the general electorate. We do not, however, rely on the Regional Director's citation to *Chicago Mathematics & Science Academy Charter School*, 359 NLRB 455 (2012), a recess-Board decision. See *NLRB v. Noel Canning*, 1345 S. Ct. 2550 (2014). Instead, we find that the Regional Director's analysis is consistent with *Hyde Leadership Charter School*, 364 NLRB No. 88 (2016) ("Hyde Leadership"). In *Hyde Leadership*, the Board applied the *Hawkins County* test to a New York charter school operating pursuant to the same state statute, whose creation by individual applicants and governance by its board of trustees exhibit only minor, non-substantive differences from the instant case. In asserting jurisdiction in *Hyde Leadership*, the Board rejected arguments that substantially mirror those raised by the Union in this case.

Additionally, to the extent that the Regional Director found that the New York Education Law does not empower the New York State Board of Regents with the authority to remove members of the charter school's board of trustees, we clarify that mischaracterization. Indeed, Sec. 226(4) of the Education Law provides that the Board of Regents may remove trustees for certain forms of misconduct or malfeasance. As we found in *Hyde Leadership*, however, this limited removal authority is "insufficient to make the trustees individuals who have 'direct personal accountability' to public officials or to the general electorate within the meaning of the

MARK GASTON PEARCE,

CHAIRMAN

LAUREN McFERRAN,

MEMBER

Dated, Washington, D.C., October 27, 2016

Member Miscimarra, dissenting:

I would grant the Union's Request for Review and dismiss the petition. The Employer is a charter school located in Hempstead, New York, that was chartered by the New York State Board of Regents pursuant to the New York Charter Schools Act. For the reasons fully explained in my dissenting opinion in *Hyde Leadership Charter School*, 364 NLRB No. 88, slip op. at 9-16 (2016) (Member Miscimarra, dissenting), I believe that the Employer is a political subdivision of the State of New York exempt from the Board's jurisdiction pursuant to Section 2(2) of the Act under the standard set forth in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971). In addition, I believe that the Board should in any event decline jurisdiction over the Employer, and over charter schools as a class, pursuant to Section 14(c)(1) of the Act for the reasons fully explained in my dissenting opinions in *The Pennsylvania Virtual Charter School*, 364 NLRB No. 87, slip op. at 11-18 (2016) (Member Miscimarra, dissenting), and *Hyde Leadership Charter School*, above, slip op. at 14-15 (Member Miscimarra, dissenting).

PHILIP A. MISCIMARRA,

MEMBER

Hawkins County test.” *Hyde Leadership*, supra, slip op. at 7 citing *Cape Girardeau Care Center*, 278 NLRB 1018, 1019 (1986) and the cases cited therein.

We likewise find no merit in the Union's arguments that the Board should, pursuant to Sec. 14(c)(1) of the Act, decline to assert jurisdiction over the Employer because education is a matter of local and state concern, and the state legislature intended to treat charter schools as public schools and political subdivisions. The Board rejected similar arguments in *Hyde Leadership*, supra, slip op. at 7-8, and *Pennsylvania Virtual Charter School*, 364 NLRB No. 87, slip op. at 9-10 (2016).